
Re: EMERGENCY MOTION-COVID-19 INFECTED PRISONER

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

JAN 11 2021

PER 
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Docket No. 4:16-CR-0006 (MWB)

ANTOINE PARIS DAVIS,

Defendant.

**DEFENDANT'S REPLY TO GOVERNMENT'S RESPONSE OPPOSING HIS MOTIONS
FOR COMPASSIONATE RELEASE AND FOR THE APPOINTMENT OF CJA COUNSEL**

Defendant, ANTOINE PARIS DAVIS, appearing *pro se*, submits this brief reply to the Government's opposition to his successive Emergency Motion for Compassionate Release and the appointment of counsel, brought pursuant to 18 U.S.C. 3582(c)(1)(A) and 3006A(a)(2)(B), and would show the Court as follows:

I. Defendant Has Repeatedly Exhausted His Administrative Remedies

On September 1, 2020, Defendant submitted to the Warden of his institution a written request based on both his unique susceptibility to contracting and perishing from the novel and extremely lethal coronavirus, and the permanent injury he sustained by virtue of the Bureau of Prisons' failure to provide care after he sustained an injury during a mandatory work assignment.

See, Attachment A. That request was placed in a secure outgoing mail receptacle located in Defendant's assigned housing unit. Only staff have access to the matter placed in that receptacle, and there is a reasonably presumption that staff took possession of the request and forwarded to the warden, who ignored the request. As of the of the filing of Defendant's successive motion, and the date of this reply, the warden has not responded to the request. More than thirty days has lapsed since Defendant submitted the annexed request, and additional requests. Thus, Defendant has satisfactorily exhausted his administrative remedies, and the Government's claim to the contrary is without a basis in fact. The Court should proceed to the merits of this motion.

II. FCI Fort Dix is in its Second Wave of a Coronavirus Outbreak.

As a preliminary matter it should be noted that the Government has repeatedly downplayed the seriousness of the situation at FCI Fort Dix. The numbers of infections reported, and sometimes publicized, are almost always false and significantly underrepresent the conditions at the facility. To be sure, despite the Government's numbers set forth in its response, on December 22, 2020, out of 230 inmates assigned to a particular unit, 183 inmates were positive for the deadly coronavirus. This was due to the recent transfer of more than 250 inmates from COVID-19 ravaged FCI Elkton (Ohio) to FCI Fort Dix, where those inmates (some of whom tested positive upon their arrival at FCI Fort Dix) had been placed in general population – approximately thirty of who were assigned to the unit referenced. Indeed, members of Congress recently decried the transfers, which caused the outbreak that has resulted in Defendant's infection. *See, Attachment B.* The Court should appoint counsel, and promptly schedule a hearing to afford Defendant an opportunity to introduce evidence of the dire conditions at FCI Fort Dix which continue to present and imminent threat of death or serious bodily injury.

As the Government correctly notes, Defendant has tested positive, then negative, then positive for the deadly virus – demonstrating that Defendant has suffered, on at least one occasion, reinfection. This is due to the inability to practice social distancing at FCI Fort Dix, coupled with the institution's unbelievable practice of placing hoards of infected inmates in close confines with one another, rather than isolating them individually (as is done in the community) to allow for recovery. The Bureau of Prisons has, at least twice, failed to adhere to the Congressional mandate set forth in 18 U.S.C. 4042(a)(2) and (3), which requires it to provide Defendant with "suitable quarters," "safekeeping," "care," and "protection," from the deadly virus. Reinfection increases the likelihood of death and further weakens the immune system. For individuals like Defendant, death is almost certain.

It should also be noted that the Government, by and through the Bureau of Prisons, and on its own, has materially misrepresented the severity of Defendant's medical conditions to the Court. For example, it has been reported that Defendant either refused to take a second medication suggested to treat his hypertension, or that he declined to have the medication prescribed. In either case, the report is false. In fact, Defendant has long since been prescribed, and takes daily, a second medication to treat his hypertension. However, despite even this second medication, Defendant's hypertension remains uncontrolled – presenting a greater threat of death or serious bodily injury in the prison environment. This Court should, thus, do as other district court have done to protect the most vulnerable class of inmates from death or serious bodily injury from the novel and exceptionally lethal coronavirus – grant the motion for compassionate release and direct the BOP to immediately release this Defendant from custody.

*See, e.g., United States v. Ivan Nunez, Docket No. 17-CR-58 (JRS)(E.D. Pa. Sept. 1, 2020)(granting compassionate release to prisoner who suffered from obesity – a COVID-19 risk factor as per the CDC); United States v. Pabon, 2020 WL 2112265, *3 (E.D. Pa. May 4, 2020)(identifying high blood pressure as a serious medical condition and one of “the two leading comorbidities associated with increased risk for COVID-19.”).*

III. The 18 U.S.C.3553(a) Factors Do Not Warrant Continued Confinement.

The Government argues that, despite the imminent threat of death or serious bodily injury posed by both the conditions at FCI Fort Dix, and Defendant’s failing health – to include his current COVID-19 infection (which resulted from gross negligence on the part of the Bureau of Prisons) – Defendant poses a danger of a sort and should not be released from custody. The Government is simply wrong. Nothing in Section 3553(a) even suggests that the Court should decline to release a prisoner who was sentenced to a definite term of imprisonment that may be transformed into a death sentence. Indeed, the parsimony clause specifically directs a court not to impose a sentence “greater than necessary.” To require a Defendant to spend the rest of his life in prison, despite the imposition of a definite term of imprisonment, with a reasonable initial expectation of release into the community, would be far greater than necessary and in violation of the parsimony clause. For this reason alone, the Court should promptly issue an order directing Defendant’s immediate release, lest it effectively reimposes and enlarges the sentence from a definite term to a sentence of life and/or death.

WHEREFORE, Defendant respectfully requests that the Court (1) appoint counsel, (2) order Defendant released on bail pending the disposition of this motion on the merits, and (3) modify the term of imprisonment by reducing that term to "time-served," in the interest of justice.

Dated: Fort Dix, New Jersey
December 24, 2020

Respectfully submitted,

/s/ Antoine Paris Davis

ANTOINE PARIS DAVIS
REGISTER NO. 74600-067
F.C.I. FORT DIX (WEST)
P.O. BOX 2000
JOINT BASE MDL, NEW JERSEY 08640

CERTIFICATE OF SERVICE

This shall serve to certify that the undersigned has served/caused to be served upon the Office of the United States Attorney for the Middle District of Pennsylvania, at 240 West Third Street, Williamsport, PA 17701, a true and correct copy of the Emergency Motion for Compassionate Release, on this 24th day of December, 2020, by placing same in the United States Mail, postage prepaid.

/s/ Antoine Paris Davis

Antoine Paris Davis

ATTACHMENT A

BP-A0148

INMATE REQUEST TO STAFF CDFRM

JUNE 10

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) DAVID ORTIZ, WARDEN	DATE: 9/1/2020
FROM: ANTOINE P. DAVIS	REGISTER NO.: 74600-067
WORK ASSIGNMENT:	UNIT:

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.

AS YOU ARE AWARE FROM MY MEDICAL CONDITIONS WHICH INCLUDE COVID-19 RISK FACTORS, I AM AT RISK OF DYING IF I CATCH THE DISEASE. AS YOU ARE ALSO AWARE, I HAVE NOW SUSTAINED PERMANENT INJURY BECAUSE THIS INSTITUTION DID NOT PROMPTLY OR PROPERLY PROVIDE CARE AFTER I SUSTAINED A WORK RELATED INJURY. THEREFORE, I AM REQUESTING COMPASSIONATE RELEASE UNDER 18 USC 3582(c)(1)(A).

(Do not write below this line)

DISPOSITION:

Signature Staff Member	Date
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Record Copy - File; Copy - Inmate

PDF

Prescribed by P5511

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94

ATTACHMENT B

November 9, 2020

Mr. Michael Cervogal
 Director
 Federal Bureau of Prisons
 120 First Street N.W.
 Washington, DC 20534

Dear Mr. Cervogal:

I write today to express grave concerns regarding the Bureau of Prisons' (BOP's) inadequate protocols for COVID-19 testing and transfer of incarcerated individuals. Specifically, we are concerned that BOP recently transferred COVID-19 positive incarcerated individuals to FCI Fort Dix, which is now facing a second, and potentially severe, COVID-19 outbreak. We strongly urge you to extend the recently enacted moratorium on transferring incarcerated individuals to FCI Fort Dix to also cover FCI Fairton, and that you continue the moratorium until BOP implements the new COVID-19 outbreak at the facility and formulates an effective and accurate testing strategy to protect both staff and incarcerated individuals from future outbreaks.

Prior to October, BOP had not reported any recent COVID-19 cases among incarcerated individuals or staff at FCI Fort Dix. However, in early October, BOP reportedly alerted staff at FCI Fort Dix that their facility would begin receiving transfers of incarcerated individuals from FCI Elkhart in Ohio. FCI Elkhart has been severely affected by COVID-19, with nearly 1,000 known cases among incarcerated individuals and staff to date.¹ Despite the known risks of transferring incarcerated individuals during a pandemic,² BOP transferred more than 150 incarcerated individuals from FCI Elkhart to FCI Fort Dix in recent weeks. On October 24, 2020, BOP confirmed in an email to congressional staff that 54 incarcerated individuals tested positive for COVID-19 in the 3B12 unit of FCI Fort Dix, which is reportedly the unit into which the individuals from FCI Elkhart were transferred. On October 29, 2020, BOP confirmed that five incarcerated individuals from FCI Elkhart who were transferred to FCI Fort Dix on the evening of October 28, 2020 had tested positive for COVID-19 upon arrival and were placed in isolation.

While the situation is rapidly evolving, it is clear that BOP does not have an effective protocol to ensure COVID-19 positive incarcerated individuals are not transferred between facilities. The outbreak is now spreading within FCI Fort Dix, and as of November 9, 2020, there are at least 24 active COVID-19 cases among incarcerated individuals and ten active COVID-19 cases among staff members.³ The FCI Fort Dix employees responsible for transporting the FCI Fort Dix inmates may have been exposed to COVID-19 in transit. All incarcerated individuals and

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FCI Fort Dix and the surrounding communities are now at increased risk for contracting COVID-19, with potentially deadly consequences.

In light of the rapidly escalating crisis at FCI Fort Dix, we urge you to immediately test all FCI Fort Dix incarcerated individuals and staff for COVID-19. We appreciate that BOP has instituted a temporary moratorium on transfers into FCI Fort Dix until November 23, 2020. However, rather than using an arbitrary date, we urge BOP to halt all transfers to FCI Fort Dix until BOP implements an effective and accurate testing strategy for incarcerated individuals and staff and there is no active case at the facility. Given that BOP does not currently have an effective strategy for safely transferring incarcerated individuals, we also request that BOP extend this moratorium to New Jersey's other facility, FCI Fenton.

In regards to an effective COVID-19 testing strategy, we strongly urge you to institute a plan to test all FCI Fort Dix incarcerated individuals and staff on at least a biweekly basis. FCI Fort Dix's employees are mostly federal workers, and it is unacceptable that BOP is not providing them with regular COVID-19 testing. By failing to test FCI Fort Dix's employees, BOP is needlessly jeopardizing not only these employees but their families, all incarcerated individuals, and the entire surrounding community.

Additionally, we request that BOP provide detailed answers to the following questions no later than **Friday, November 20, 2020**:

- 1) If BOP cannot halt all transfers of incarcerated individuals to FCI Fort Dix and FCI Fenton until the current COVID-19 outbreak at the facility has ended and there are no active cases among incarcerated individuals or staff?
- 2) During the FCI Fort Dix transfer moratorium, will BOP also commit to halting any transfers of incarcerated individuals to FCI Fenton?
- 3) What is BOP's plan for addressing the current COVID-19 outbreak at FCI Fort Dix, including information on testing, safety protocols, notifications to staff and incarcerated individuals, as well as any future outbreaks at FCI Fort Dix and ensuring the safety of incarcerated individuals and staff?
- 4) In an email to congressional staff BOP indicated that incarcerated individuals who had not been positive for COVID-19 in the previous 90 days and were asymptomatic were not permitted before being transferred from FCI Elkhart to FCI Fort Dix. Can you verify that all FCI Fort Dix incarcerated individuals who previously tested positive for COVID-19 received negative COVID-19 test results before their transfer to FCI Fort Dix? Please describe, in detail, the process for testing the FCI Elkhart incarcerated individuals prior to their transfer to FCI Fort Dix.
- 5) What is BOP's overall, long-term COVID-19 testing strategy for FCI Fort Dix? How will BOP update the COVID-19 testing strategy at FCI Fort Dix in light of the recent outbreak?
- 6) What steps begin providing COVID-19 testing to FCI Fort Dix employees? If so, how will such testing occur?
- 7) How has FCI Fort Dix spent the CARES Act (P.L. 116-126) funding that has been allocated the facility? Please provide a detailed breakdown.

Thank you for your prompt consideration of this urgent matter.



Robert Menendez
United States Senator



Cory A. Booker
United States Senator



Frank Pallone, Jr.
Member of Congress



Bill Pascrell, Jr.
Member of Congress



James L. McGovern
Member of Congress



Donald M. Payne, Jr.
Member of Congress



Donald Norcross
Member of Congress



Bonnie Watson Coleman
Member of Congress



John G. Dingell
Member of Congress



Mike Sherrill
Member of Congress



Andy Kim
Member of Congress



Tom McClintock
Member of Congress

Lucine Paris Davis

Reg. No. 74600-067

FCT Fort Dix

P.O. Box 2000

JOINT BASE MDL, NJ 08640

RECEIVED
SCHUYLER

JAN 11 2021

PER
DEPUTY CLERK

United States District Court
Middle District of Pennsylvania
235 North Washington Ave
Scranton, PA 18501

